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TALKING POINTS FOR STATE DEPARTMENT DELAWARE MEETING

Previous discussions with State of Delaware Officials

Six meetings and several telephone conversations took place in Dover and Wilmington.

The State Department was represented by attorney advisors Mike White and Bruce Dozier. The Air Force was represented by Major Robert Giovagnoni (DAFB Staff Judge Advocate). Various Delaware officials attended 1 or more of the meetings. These individuals included:

1) Governor Pierre S. DuPont, IV.
2) Mr. David Swayze (Governor DuPont's personal legal adviser)
3) Mrs. Battle Robinson (attorney and aide to Governor DuPont and Mr. Sawyze)
4) Assistant Attorney General Edward Kafader.
5) Secretary of Health and Social Services Dr. Patricia Schramm.
6) Registrar Dr. Barbara Rose.
7) Deputy Registrar Dr. George Bender.
8) Medical Examiner Dr. Ali Hameli.

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I Areas of Mutual Agreement

1. No "mass burial" of the Guyana deceased will occur in Delaware.

The possibility of a mass burial occurring in Delaware was a concern shared by an apparent majority of the Delaware politicians. The fear expressed was that a common burial site might become a cult memorial which would becon

the site of a mecca of all sorts of curiosity seekers. Governor Du Pont was personally assured that the State Department has no plans for a "mass burial" in Delaware. A commitment was given that no "mass burial" would occur in Delaware. "Mass burial" was never defined. However, it was understood to be limited to mean no burial of the group in a common grave or no burial of the entire group in individual graves at a single site in Delaware.

2. Documentation that would satify Delaware legal requirements for transportation of bodies through Delaware for burial elsewhere.

After several discussions with Delaware officials, including Governor DuPont, agreement was reached on what documents constitute an acceptable permit for removal to allow transport of the bodies through Delaware. The following documents will accompany each body that is released from the Dover Air Force Base to a funeral director.

1) Opinion of the Delaware Attorney General No. 78-020 of December 6, 1978.
2) Statement of December 8, 1978 by Assistant Attorney General Edward Kafader which specifies which documents are deemed to satify the opinion of the Attorney General.
3) Statement of Transit. Drafted by Assistant Attorney General Kafader that requires the private funeral director to state that he is obtaining release of the body for transport outside of Delaware.

3. Statement of Identification and Chain of Custody. Individual statements are prepared for each body that is identified by medical team chief Colonel William R. Cowan. This statement specifies the methods used in identification.

4. Letter of December 4, 1978 from Guyanese Solicitor General Gonsalves-Sabola to Ambassador Burke in which he states that the bodies of the Jonestown deceased were lawfully removed from Guyana by the U.S. Air Force.

II. Subjects Still Under Discussion Yet to be Resolved

A. Requirements of Delaware Law Concerning Cremation of Guyana Deceased Where this Option is Requested by Next of Kin.

1. Delaware is taking a strict view of its law on the question of cremation.

A memorandum of December 1, 1978 from Dr. Patricia Schramm to Governor DuPont stated:

"Cremation in Delaware would appear to be extremely unlikely because Delaware code would require that a Medical Examiner or member of the Office of The Attorney General endorse a certificate to the effect that there is no medical or legal reason why the destriction of the body by cremation should not be permitted (16 Del. Code 3162). Under the present circumstances, it is unlikely that such certification could be obtained, certainly not without investigation of death."

Secretary Schramm's memo seems to be in error on this question. 16 Del. Code 3167 appears to be controlling on this issue. This section of Delaware law is entitled "Cremation in this State (Delaware) when death occurred elsewhere." This law provides that cremation in Delaware of persons dying elsewhere is permissible if all the legal requirements of the state in which the death occurred have first been complied with. Mr. Dalton (L/CA) concurs with our interpretation of the Delaware law. Secretary Schramm admitted orally that her memorandum to Governor Dupont should not be considered a legal memo, as she is not an attorney.

In a letter dated December 9, 1978 Guyanese Solicitor General Gonsalves-Sabola stated that the death certificates being prepared for the Jonestown deceased are legally sufficient under the laws and regulations of Guyana to permit either cremation or burial in Guyana. It would seem therefore that Delaware has no legal obligation to investigate cause of death before allowing cremation to occur in Delaware under the provisions of Section 3167.

COMMENT: The cremation issue is a significant one because it is the least expensive way a next of kin can dispose of the remains. In light of the financial situation of a number of the next of kin the inability to cremate in Delaware might have an adverse effect on persons making claims for the bodies. Note: Several Delaware funeral directors have successfully cremated Jonestown deceased in New Jersey and Pennsylvania with no investigation and no problems. It would seem that Delaware should in light of the flexibility in their statute do likewise. It seems unfortunate that the next of kin are being required to bear this additional expense as the result of Delaware's restrictive interpretation of their law.

Assistant A. G. Kafader did say that our interpretation of Section 3167 had merit and he would give it due consideration. He is however reserving judgment pending results of Guyana coroner's inquest. His stated concern at this point is his duty to protect his client (Del. Department of

Health) from any possible liability that might result from a failure to investigate cause of death before cremation occurred.

OBSERVATION: This concern may be the Delaware public explanation intended to mask Delaware's political objections to permitting cremation to occur in Delaware.

B) Burial in Delaware of Identified & Claimed Bodies where next of Kin so Request.

While there has been strong objection voiced by the officials of the State of Delaware to "mass burial" they have taken a more moderate stance on the question of next of kin requests for burial in Delaware.

Governor Du Pont personally indicated to Mr. White & Mr. Dozier that he did not see how Delaware could refuse a request by next of kin for burial in Delaware.

Secretary Schramm in her memorandum of December 1, 1978 to Governor Du Pont stated "Burial in Delaware is a more complex issue (than transport outside Delaware for burial). If a body is accompanied by the above-cited permit and an acceptable death certificate (with cause of death on the certificate), and is identified and claimed, the burial permit could be issued. I am informed that even under these conditions, it could be argued that the State has an obligation to investigate the death since circumstances suggest that the deaths were caused other than by natural causes in this instance (16 Del. Code 3125 (e)).

Since we have a letter of Guyana Solicitor General Gonsalves-Sabola indicating that the bodies were lawfully removed from Guyana (incorporated by Delaware as part of the transit packet) and we have a commitment from Guyana that they will be issuing death certificates specifying cause of death it would seem that burial in Delaware upon a request by next of kin should be allowed.

Informally, Assistant Attorney General Kafader said that it was his opinion that the 2 abovementioned documents coupled with the Solicitor General's letter of December 9th that specified that the death certificates being issued for the Jonestown deceased were legally sufficient for burial/cremation in Guyana would allow for burial in Delaware.

Mr. Kafader did reserve final judgment pending receipt of the results of the Guyana Coroner's Inquest and a representative sample of Guyana death certificates.

C. Burial of Some of the Unclaimed/Unindentified in Delaware

Delaware opposes "mass burial" of the Guyana deceased in Delaware They have also expressed concern over burial of any large number of unclaimed/unidentified in the State.

The Delaware position is that Delaware should not be required to shoulder the burden here. (This seems specious though since there is no burden. The fee paid to Delaware morticians & cemetery owners will eventually be redistributed throughout the state.

It would seem that Delaware could not strongly oppose other than on purely political grounds burial of a number of the unclaimed/unidentified in 10-12 cemeteries throughout the state. The deceased could be placed in unmarked graves (thus no "memorial to the Jonestown incident would result. The possibility of such a "memorial" has been spared by Delaware authorities. The names of the persons buried could be kept on file at the cemetery office.)

This solution would be easier to "sell" to Delaware if the number of unclaimed/unidentified can be kept under 300 and if neighboring states (Pa. N.J. & Md) agreed to accept some of these

bodies for burial.

The newly created State and Local Gov't Liaison Office in the Department contacted in an effort to solicit interest in the neighboring states to Delaware regarding burial in those states.

ADVANTAGES AND DISADVANTAGES OF METHODS OF DISPOSITION OF THE UNCLAIMED AND/OR UNIDENTIFIED

A. BURIAL AT SEA

At first glance, burial at sea appears to be an attractive option. It obviates the need to find a site or sites in the U.S. and eliminates the possibility of difficult negotiations with state officials. In addition, costs would be relatively low and legal requirements are not complex. Preliminary discussions with the Coast Guard indicate that they would probably be cooperative and might carry out the task on a non-reimbursable basis.

There are, however, several serious disadvantages. Chief among these is the fact that bodies buried at sea are beyond recovery. The Department would not be able to retrieve the bodies should next-of-kin come forward. Similarily, if additional investigations of whatever kind necessitated a reexamination of the bodies it would not be possible. On a logistical level, the Coast Guard has stated that the large number of bodies, perhaps as many as 250, would exceed the capacity of the relatively small vessels which they operate, thus making necessary a number of separate operations. Federal law requires that the bodies be buried in at least 600 feet of water which, on the East Coast, would preclude burial at distances less than 100 miles from shore.

Finally, one can easily envision strenuous objections to such a large scale burial at sea from environmental and fishing interests. Such protests could be international in nature.

B. CREMATION

Like burial at sea, cremation would eliminate the need to obtain a burial site or sites and, thus, lessen significantly the potential for protracted discussion with unenthusiastic state and local officials. Cremation is also advantageous because of its relatively inexpensive costs.

Again, however, one must confront the problem of the irrevokability of this means of disposition. This constitutes a substantial disadvantage since it is difficult to predict what additional claims or further investigations might arise. Finally, it must be recognized the some persons will view cremation as "destruction of evidence."

C. Burial at a Site or Sites in the U.S.

This course of action unfortunately necesitates additional and often difficult negotiations with state and local officials. In addition, the costs are likely to be substantial unless a donor of land and/or services can be found.

By pursuing this option, however, the Department presevers its capacity to correct errors or oversights which may have occurred in notifying next-of-kin and related matters. Also by committing itself to land burials of the deceased, the Department will avoid the serious pitfalls, described above, which are inherent in burial at sea and cremation. Moreover, it is anticipated that as many as two-hundred (200) of the unidentified will be children. The media and public reaction to cremation or other forms of irrevocable destruction of 200 children might be quite negative.

Identification Procedure

The following methods were utilized in identifying the bodies of the Jonestown deceased:

1. Positive identification by fingerprint comparison. (An FBI team at DAFB took fingerprints of deceased. These prints were compared to prints in FBI files and some state/local police files. The principal source for comparison prints, however, came from Guyana Immigration records. As part of the routine Guyana immigration procedure fingerprints are taken on all persons aged 16 and older.)

2. Positive identification by correlation of antemortem and post mortem dental characteristics (Dental charting and x-rays were done at DAFB. These records are being compared with records provided by next of kin and various dentist/dental schools.)

3. Supporting physcial characteristices. (Individual charts were prepared by the identification team at DAFB. This chart noted clothing worn by deceased, and any other characteristics such as sex, approximate age and weight etc, that might aid in identification. This data was compared with such things as the individuals passport application.)

4. Supporting personal effects and/or medical records.

5. Body tag from Guyanese identification. (Walk through sight efforts are presently being made to obtain footprint records from various California hospitals. Diane Hunter of the Mayor of San Francisco's Guyana Task Force has voluntered to assist

in this regard. This effort is considered important to assist in identifying the approximately 200 children in the group since no fingerprints of the children were made by Guyana immigration. Ms. Hunter has also been asked to assist in obtaining medical/dental records from various Calfornia facilities.

Once the Air Force Institute of Pathology team leaves Dover Air Force Base The data they have obtained will be stored in a military computer in Denver, Colorado. The actual records will be kept on file at the AFIP headquaters in Washington, D.C. When additional information is obtained the information stored in the computer will be retrieved and compared against the new information.

NOTE: The most difficult identifications are the children (approx 234 in the group). Some 633 persons of the 913 have been identified. An additional set of 80 Guyanese fingerprints was recently discovered in Guyana. It is hoped that these prints will aid in a number of additional identifications.

There have been numerous appeals to the press and media to report the need for footprints, medical and dental records. This campaign has borne some fruit and it is hoped that the People's Temple will assist in the identifications by providing various medical/dental records of the members.